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October 12, 2001

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Boston Gas Company Fifth Annual Rate Adjustment, D.T.E. 01-74

Dear Secretary Cottrell:

In *Boston Gas Company*, D.P.U. 96-50 (Phase I) (1996), the Department of Telecommunications and Energy (“Department”) approved a five-year performance-based ratemaking (“PBR”) plan for Boston Gas Company (“Boston Gas” or the “Company”).¹ The Department stated that “[u]nder the Company’s price cap plan, Boston Gas would commence price cap regulation as of December 1, 1996 to continue through November 30, 2001. . . .”² *Boston Gas Company*, D.P.U. 96-50 (Phase I), p. 319 (1996). The Department’s orders limit the duration of the current PBR plan to five years, with the expiration occurring in 2001, but, “[d]epending upon the results of this evaluation, the plan may be extended without modification for an additional term, extended with modifications, or terminated. *Id.*, p. 321³

On August 23, 2001, the Department directed Boston Gas to file its “fifth annual rate

¹ Now Boston Gas Company d/b/a KeySpan Energy Delivery New England.

² The Department made annual price cap rate changes effective November 1 for all years subsequent to the initial cast off rates established in D.P.U. 96-50.

³ “It is premature for the Company to assume that its PBR plan will be merely extended for another term, in the same form and substance as approved herein. By this Order, the Department has approved a five-year term for Boston Gas’s PBR plan. At the end of the term of the PBR approved herein, Boston Gas may propose modifications to the PBR.” D.P.U. 96-50 (Phase I), pp. 15-16.

adjustment request” by September 15, 2001. The Department also directed Boston Gas to file a proposal to succeed its current PBR plan by September 15. On September 17, 2001, Boston Gas filed what the Company purports is its “fifth annual PBR rate adjustment” (the “Fifth Filing”), proposing new rates which are set to go into effect from November 1, 2001 through October 31, 2002. Boston Gas, however, failed to file a proposal to succeed its current PBR plan. Instead, it stated, in a letter dated September 14, 2001, that it would make a responsive proposal to the Department no later than July 1, 2002.

The Attorney General requests clarification regarding the status of the Fifth Filing.⁴ It appears that the Department inadvertently directed Boston Gas to file a “fifth annual rate adjustment request” in its August 23, 2001 letter since the Fifth Filing clearly exceeds the five-year term of the PBR authorized in D.P.U. 96-50. The Attorney General has no record of a Company request to extend the five-year term, the Department has provided no notice of a proposed extension of the five-year term, there has been no hearing on such an extension, and there has not been an opportunity for comments on the merits of an extension.⁵ The Fifth Filing, therefore, is unauthorized and the Department should reject it. *See Boston Gas Company*, D.P.U. 96-50 (Phase I), p. 319 (1996)(where the Department limited the duration of the PBR plan to a five-year time limitation ending in 2001); *see also* G.L. c. 30A, §11; the Department’s Procedural Rules, 220 C.M.R. §1.00 *et seq.*

If the Company desired an extension of the five-year term, it had the opportunity to request such an extension by the September 15th deadline afforded to it by the Department. Boston Gas, however, opted not to file a request for an extension or a proposal for a successor plan even though its current five-year plan was set to expire. Instead, Boston Gas filed only its purported Fifth Filing. The implementation of the Company’s proposed \$ 4.898 million rate increase is unwarranted without first conducting an investigation into whether an extension is proper.⁶

⁴ “Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning.” *Service Quality Standards*, D.T.E. 99-84-B, p. 2 (2001).

⁵ “Given the relative lack of experience with PBRs in the gas distribution industry, it would be speculative to presume what modifications, if any, a PBR approved in 1996 would require in the year 2001. D.P.U. 96-50 (Phase I), p. 15, n. 8.

⁶ The Company’s own expert witness does not support an extension without further Department review. Mark N. Lowry, Ph.D., testified during hearings that “my vision of how a price cap plan would be updated for Boston Gas or other gas distributors is that at the end of the five-year period there would be a recalculation of the TFP trend, in essence, an updating of it, and that would capture any unforeseen productivity growth or lack thereof that might occur over the next five years...So there would be a natural truing up process if the price cap plan was renewed in a conventional way...[and with respect to adjustments for inaccuracies]... It would be updated to reflect the most recent available data and thereby

Therefore, the Attorney General requests that the Department clarify the status of the Fifth Filing and reject the requested rate increase.

Very truly yours,

Wilner Borgella, Jr.
Assistant Attorney General
Regulated Industries Division
Office of the Attorney General
200 Portland Street, 4th Floor
Boston, MA 02114
(617) 727-2200 ext. 3449

WB/wb

cc: Caroline O'Brien, Hearing Officer
Joseph F. Bodanza
Robert J. Keegan, Esq.
Ann E. Leary
Service List

would capture the recent productivity growth. If it turned out that growth was substantially more rapid or less rapid than that which occurred over the last ten years, then it would be reflected and there would be a different X factor because of it." Tr. 16, pp 26-27.